

## **DECISION MEMORANDUM**

**TO: COMMISSIONER KJELLANDER  
COMMISSIONER RAPER  
COMMISSIONER ANDERSON  
COMMISSION SECRETARY  
COMMISSION STAFF**

**FROM: CAMILLE CHRISTEN  
DEPUTY ATTORNEY GENERAL**

**DATE: SEPTEMBER 30, 2016**

**SUBJECT: THE PETITION OF IDAHO POWER COMPANY FOR A  
DECLARATORY ORDER REGARDING PROPER AVOIDED COST  
PRICING FOR JACKPOT SOLAR, CASE NO. IPC-E-16-21**

On September 26, 2016, Idaho Power Company petitioned the Commission for a Declaratory Order regarding proper avoided cost pricing for Jackpot Solar under the Public Utility Regulatory Policies Act of 1978 (PURPA). The Company states that Jackpot Solar is requesting avoided cost pricing for four qualifying facilities (QF), each planned to have a nameplate capacity of 20 MW. The Company states that Jackpot Solar is requesting avoided cost pricing under the Company's incremental cost Integrated Resource Planning (IRP) method, calculated at the time of contracting. According to the Company, Jackpot Solar claims that it is entitled to lock-in an avoided cost rate for capacity at the time of the initial two-year contract, although the Company is not capacity deficient until 2024. The Company asks for a declaratory ruling that, under these facts, the proper avoided cost is determined at the beginning of each two-year contract term, not upon the initial contract; and that a QF is not entitled to lock-in an avoided cost rate beyond the two-year maximum contract term.

### **BACKGROUND**

PURPA was passed as part of the National Energy Act of 1978. The Act's goals include the encouragement of electric energy conservation, efficient use of resources by electric utilities, and equitable retail rates for electric consumers, as well as the improvement of electric service reliability. 16 U.S.C. § 2601 (Findings). Under the Act, the Federal Energy Regulatory Commission (FERC) prescribes rules for PURPA's implementation. 16 U.S.C. § 824a-3(a), (b). State regulatory authorities such as the Idaho Public Utilities Commission implement FERC

rules, but have “discretion in determining the manner in which the rules will be implemented.” *Idaho Power Company v. Idaho Pub. Util. Comm.*, 155 Idaho 780, 782, 316 P.3d 1278, 1280 (2013) (citing *F.E.R.C. v. Mississippi*, 456 U.S. 742, 751 (1982)).

PURPA requires electric utilities, unless otherwise exempted, to purchase electric energy from QFs. 16 U.S.C. § 824a-3; *see also* 18 C.F.R. § 292.101, 292.303(a). In Idaho, the Commission must approve the purchase rate in a utility’s contract to buy QF energy under PURPA. *Idaho Power*, 155 Idaho at 789, 316 P.3d at 1287. The purchase rate for PURPA contracts must be “just and reasonable to the electric consumers . . . and in the public interest” and “shall not discriminate against [QFs].” 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304. Also, the purchase rate shall not exceed the “incremental cost” to the utility, defined as the incremental cost of electric energy or capacity which, “but for the purchase from [the QF], such utility would generate itself or purchase from another source.” 16 U.S.C. § 824a-3(d); 18 C.F.R. § 292.101(6) (defining avoided costs).

PURPA and FERC’s implementing regulations are silent as to contract length; consequently, the contract length is left to the Commission’s discretion. *See Afton Energy, Inc. v. Idaho Power*, 107 Idaho 781, 785-86, 693 P.2d 427, 431-32 (1984); *Idaho Power*, 155 Idaho at 782, 316 P.3d at 1280. Ever since PURPA was implemented in Idaho, this Commission has periodically modified the length for PURPA contracts. *See* Order No. 29029. Initially, the Commission established a maximum contract term of 35 years, which it shortened to 20 years in 1987. Order Nos. 21018, 21630. The term was reduced to five years in 1996, and raised back to 20 years in 2002. Order Nos. 26576, 29029. In 2015, the term was reduced to two years for individually-negotiated contracts (those not subject to standard “published” rates). Order Nos. 33357, 33419. When it shortened the term, the Commission also determined that utilities should establish a capacity deficiency date at the time the initial contract is signed. Order No. 3357 at 25-26; Order No. 33419 at 9, 21-23. The Commission decided that, as long as the QF continuously sells power to the utility, the QF would be entitled to payments for capacity based on the capacity deficiency date established at the time of the initial contract. Order No. 3357 at 25-26; Order No. 33419 at 9, 21-23. The Company now asks for a declaratory ruling that the avoided cost prices for these negotiated contracts, including the capacity component, are to be calculated and reset prior to each successive two-year contract term.

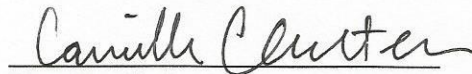
Procedural Rules 101 and 102 provide for the issuance of declaratory rulings by the Commission. IDAPA 31.01.01.101 and .102. Pursuant to Rule 101, persons seeking a declaratory ruling must state the ruling that the petitioner seeks, set out the factual allegations, and indicate the statute or other controlling law pertaining to the petition. IDAPA 31.01.01.101.02. Rule 102 provides that the notice of the petition for a declaratory ruling will be issued to all affected utilities. IDAPA 31.01.01.102.

#### **STAFF RECOMMENDATION**

Staff recommends that the Commission issue a Notice of Petition and Notice of Modified Procedure, with comments due within 21 days of the service date of the Order and reply comments, if any, due within 14 days of the comment deadline.

#### **COMMISSION DECISION**

Does the Commission wish to issue a Notice of Petition and Notice of Modified Procedure, with comments due within 21 days of the service date of the Order, and reply comments, if any, due within 14 days of the comment deadline?



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Deputy Attorneys General

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